

EXHIBIT 3

1 IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

2 201ST JUDICIAL DISTRICT

3
4 CAUSE NO. D-1-GV-07-001259

5
6 ----- X

7 THE STATE OF TEXAS, ex rel. VEN-A-CARE)

8 OF THE FLORIDA KEYS, INC.)

9 Plaintiffs,)

10 v.)

11 SANDOZ, INC., et al.)

12 Defendants.)

13 (COMPLETE CAPTION ON FOLLOWING PAGE))

14 ----- X

15
16 VIDEO DEPOSITION OF
17 RAYMOND S. HARTMAN, PH.D.

18 VOLUME II

19
20 Boston, Massachusetts

21 Thursday, July 23, 2009

22 9:58 a.m. to 5:19 p.m.

23
24 Reporter: Justina M. Pettinelli, RDR/CRR

1 for reimbursement for a lot of payers; and when
2 that is recognized, there's -- the ability to
3 compete on spread arises when there are list
4 prices that are AWP and WAC for a drug, either
5 one, and that deviate substantially from
6 acquisition prices, from transactions prices.

7 Q. So in terms of -- as far as you know,
8 there isn't a consistent fixed percentage
9 relationship between AWP and WAC on generic drugs,
10 would you agree with that?

11 A. I have not studied it to know that there
12 is one in the way that there is for innovator
13 drugs.

14 Q. And in the Mylan drugs that you studied,
15 did you see that there was any consistent
16 percentage relationship between AWP and WAC?

17 A. I didn't look at that.

18 Q. You also say "Since AWP and its related
19 WAC are often used as the primary bases for
20 reimbursement," do you see that part?

21 A. I do.

22 Q. Is it your testimony that AWP is used as
23 the primary basis for reimbursement in Texas?

24 A. Well, what -- it's my testimony that
25 Texas has, over the period of time we're focusing

1 through D.4, D.5, D.6 where the ratio of the
2 reimbursement rate based on the reported price
3 relative to the WEAC price is considerably higher.
4 That's not -- that's certainly just a small subset
5 of the NDCs for which -- that I present that
6 information.

7 Q. Well, you kind of took the worst cases
8 there; right?

9 A. Yeah, I looked at the ones that
10 obviously were showing what could happen if this -
11 - to the extent there was a real abuse. I'm
12 trying to look at the total dollar amounts. It's
13 hard for me to draw that -- to draw a conclusion
14 about that.

15 Q. Just so we -- we may need to clarify
16 something for the record. Can you describe, you
17 know, as briefly as you can what you understand
18 about the dynamics of pricing in the generic
19 business? Let's assume you've got five
20 competitors for the same chemical entity. What
21 tends to happen to transaction price and WAC, and
22 AWP for that matter?

23 MR. DOUGLAS: Object to form.

24 BY MR. CROSS:

25 Q. If you can. If you can.

1 A. Well, generally the scenario is that the
2 first ANDA filer has a 180-day exclusivity. So
3 you will have a generic drug launching.

4 Q. That's if you file a Paragraph IV?

5 A. Yeah, that's right. Okay. I guess most
6 cases I'm just used to the Paragraph IV.

7 Q. Well, that's where the lawsuits come in.

8 A. Right you are.

9 MR. DOUGLAS: Object to --

10 MR. CROSS: I'm not trying to interrupt
11 you.

12 MR. DOUGLAS: I know you're not, but I
13 still have to object to the form, to the side-bar,
14 whatever.

15 A. The -- if a -- a first generic launching
16 will launch with an AWP that's a little bit more
17 than 10 percent below the branded AWP, generally;
18 and a lot of the me too generics will follow suit
19 and launch with an AWP that's -- that clusters
20 around 10 to 15 percent below the branded AWP.

21 The WACs I've followed less closely in
22 what their patterns are. They can be more
23 erratic. If there is exclusivity, then the ASP --
24 the acquisition cost to the market as a whole will
25 probably be about 30 percent below the branded

1 drug price.

2 By the time you get to five or six
3 generics, you're going to be dropping
4 considerably, and the competition -- the
5 acquisition cost, the average sale price for the
6 generic will decline. It can decline up to 80, 90
7 percent of the branded average sale price. And
8 then the competition is between generics based on
9 how low their price is relative to in some cases
10 what the basis for the reimbursement is with the
11 list price.

12 Q. Have you observed that over time WAC
13 tends to follow transaction price down? I'm not
14 saying in lockstep, but --

15 A. I would not characterize it that way,
16 but I haven't studied it closely enough to --

17 Q. And once a transaction price or ASP,
18 whatever you want to call it, average transaction
19 price gets down to a low level, is it -- in your
20 studies, have you observed that they tend to come
21 back up?

22 A. There is a --

23 Q. Excuse me. I don't mean to interrupt.
24 Absent some event in the marketplace, absent, you
25 know, a plant blowing up or somebody exiting the